To:	Benjamin A. Costa(trademark@rcjlawgroup.com)
Subject:	U.S. Trademark Application Serial No. 97352639 - SALES LANGUAGE LEARNING
Sent:	August 16, 2023 07:27:47 AM EDT
Sent As:	tmng.notices@uspto.gov

Attachments

United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application Serial No. 97352639

Mark: SALES LANGUAGE LEARNING

Correspondence Address:
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Applicant: Mantra Systems, Inc

Reference/Docket No. N/A

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FINAL OFFICE ACTION

Response deadline. File a request for reconsideration of this final Office action and/or a timely appeal to the Trademark Trial and Appeal Board (TTAB) within three months of the "Issue date" below to avoid abandonment of the application. Review the Office action and respond using one of the links below to the appropriate electronic forms in the "How to respond" section below.

Request an extension. For a fee, applicant may request one three-month extension of the response deadline prior to filing a response and/or an appeal. The request must be filed within three months of the "Issue date" below. If the extension request is granted, the USPTO must receive applicant's response and/or appeal within six months of the "Issue date" to avoid abandonment of the application.

Issue date: August 16, 2023

This Office action is in response to applicant's communication filed on July 24, 2023.

In a previous Office action(s) dated January 16, 2023, the trademark examining attorney refused

registration of the applied-for mark based on the following: Substantive Refusal: descriptiveness refusal.

Further, the trademark examining attorney maintains and now makes FINAL the refusal(s) in the summary of issues below. *See* 37 C.F.R. §2.63(b); TMEP §714.04.

SUMMARY OF ISSUES MADE FINAL that applicant must address:

- Substantive Refusal: descriptiveness refusal.

Substantive Refusal: descriptiveness refusal:

The examining attorney refused registration on the Principal Register because the proposed mark merely describes a feature and characteristic of the services. Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1); TMEP section 1209 *et seq.*

The applicant applied to register "**SALES LANGUAGE LEARNING**" for provision of courses of instruction in languages in Int. class 41. Applicant was informed that its mark immediately names a feature and characteristic of the services, namely that the applicant features courses of instruction that teach learning sales language.

The applicant disagreed and stated the law but provided no evidence as to why the mark is not descriptive and stated that if the composite mark is not 100% descriptive then the mark as a whole is not descriptive.

Applicant's arguments have been considered and found unpersuasive for the reason(s) set forth below. The evidence provided demonstrated that the mark is descriptive. The applicant has combined the descriptive wording of SALES LANGUAGE and LEARNING and based on the evidence provided to the applicant the combination is still descriptive. The examining attorney provided the following evidence and definitions to the applicant demonstrating how the mark is descriptive:

Sales language is used specifically in the context of making sales.If you have any doubts about there being a specific type of language that is used in selling please lose them now because excellent salespeople say things differently.

https://www.sellingandpersuasiontechniques.com/sales-language.html

What does sales language mean?

Sales language refers to the words and phrases that are used by sales reps to persuade people to buy products or services.

https://revenuegrid.com/blog/sales-language/

Learning refers to instruction or teaching.

https://www.merriam-webster.com/dictionary/learning

Together the words explain that the applicant features courses that teach different sales language or

buzz words. Also attached were registrations showing the wording LANGUAGE LEARNING disclaimed for the same or related goods and services.

Marks comprising more than one element must be considered as a whole and should not be dissected; however, a trademark examining attorney may consider the significance of each element separately in the course of evaluating the mark as a whole. *See DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1253, 103 USPQ2d 1753, 1756-57 (Fed. Cir. 2012) (reversing Board's denial of cancellation for SNAP! with design for medical syringes as not merely descriptive when noting that the Board "to be sure, [could] ascertain the meaning and weight of each of the components that ma[de] up the mark"); *In re Hotels.com, L.P.*, 573 F.3d 1300, 1301, 1304, 1306, 91 USPQ2d 1532, 1533, 1535, 1537 (Fed. Cir. 2009) (holding HOTELS.COM generic for information and reservation services featuring temporary lodging when noting that the Board did not commit error in considering "the word 'hotels' for genericness separate from the '.com' suffix").

Generally, if the individual components of a mark retain their descriptive meaning in relation to the goods and/or services, the combination results in a composite mark that is itself descriptive and not registrable. *In re Zuma Array Ltd.*, 2022 USPQ2d 736, at *7 (TTAB 2022); *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1516 (TTAB 2016); TMEP §1209.03(d); *see, e.g.*, *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1255, 103 USPQ2d 1753, 1758 (Fed. Cir. 2012) (holding SNAP SIMPLY SAFER merely descriptive for various medical devices, such as hypodermic, aspiration, and injection needles and syringes); *In re Fallon*, 2020 USPQ2d 11249, at *12 (TTAB 2020) (holding THERMAL MATRIX merely descriptive of a heat-responsive, malleable liner that is an integral component of an oral dental appliance).

Only where the combination of descriptive terms creates a unitary mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the goods and/or services is the combined mark registrable. *See In re Omniome, Inc.*, 2020 USPQ2d 3222, at *4 (TTAB 2019) (citing *In re Colonial Stores, Inc.*, 394 F.2d 549, 551, 157 USPQ 382, 384 (C.C.P.A. 1968); *In re Shutts*, 217 USPQ 363, 364-65 (TTAB 1983)); *In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1162-63 (TTAB 2013); *In re Cannon Safe, Inc.*, 116 USPQ2d 1348, 1351 (TTAB 2015) (holding SMART SERIES merely descriptive of metal safes for firearms); *In re Franklin Cnty. Hist. Soc'y*, 104 USPQ2d 1085, 1086 (TTAB 2012) (holding CENTER OF SCIENCE AND INDUSTRY merely descriptive of operating a museum and conducting workshops, programs, and demonstrations in the field of science); *In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1823 (TTAB 2012) (holding SEMICONDUCTOR LIGHT MATRIX merely descriptive of light and UV curing systems composed primarily of light-emitting diodes (LEDs) for industrial and commercial applications); *In re King Koil Licensing Co.*, 79 USPQ2d 1048, 1052 (TTAB 2006) (holding THE BREATHABLE MATTRESS merely descriptive of beds, mattresses, box springs, and pillows); *In re Putman Publ'g Co.*, 39 USPQ2d 2021, 2021-22 (TTAB 1996) (holding FOOD & BEVERAGE ON-LINE merely descriptive of news and information service for the food processing industry); *In re Copytele, Inc.*, 31 USPQ2d 1540, 1541-42 (TTAB 1994) (holding SCREEN FAX PHONE merely descriptive of facsimile terminals employing electrophoretic displays).

The determination of whether a mark is merely descriptive is made in relation to an applicant's goods and/or services, not in the abstract. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); TMEP §1209.01(b). "Whether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

Accordingly, the mark is refused registration on the Principal Register under Section 2(e)(1).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Supplemental Registration:

Although an amendment to the Supplemental Register would be an appropriate response to this refusal(s) in an application based on Trademark Act Section 1(a) or 44, such a response is not appropriate in the present case. The instant application was filed under Section 1(b) and is not eligible for registration on the Supplemental Register until an acceptable amendment to allege use meeting the requirements of 37 C.F.R. §2.76 has been timely filed. 37 C.F.R. §2.47(d); TMEP §§816.02, 1102.03.

If applicant files an acceptable allegation of use and also amends to the Supplemental Register, the application effective filing date will be the date applicant met the minimum filing requirements under 37 C.F.R. §2.76(c) for an amendment to allege use. TMEP §§816.02, 1102.03; *see* 37 C.F.R. §2.75(b). In addition, the undersigned trademark examining attorney will conduct a new search of the USPTO records for conflicting marks based on the later application filing date. TMEP §§206.01, 1102.03.

Although registration on the Supplemental Register does not afford all the benefits of registration on the Principal Register, it does provide the following advantages to the registrant:

(1) Use of the registration symbol ® with the registered mark in connection with the designated goods and/or services, which provides public notice of the registration and potentially deters third parties from using confusingly similar marks.

(2) Inclusion of the registered mark in the USPTO's database of registered and pending marks, which will (a) make it easier for third parties to find it in trademark search reports, (b) provide public notice of the registration, and thus (c) potentially deter third parties from using confusingly similar marks.

(3) Use of the registration by a USPTO trademark examining attorney as a bar to registering confusingly similar marks in applications filed by third parties.

(4) Use of the registration as a basis to bring suit for trademark infringement in federal court, which, although more costly than state court, means judges with more trademark experience, often faster adjudications, and the opportunity to seek an injunction, actual damages, and attorneys' fees and costs.

(5) Use of the registration as a filing basis for a trademark application for registration in certain foreign countries, in accordance with international treaties.

See 15 U.S.C. §§1052(d), 1091, 1094; J. Thomas McCarthy, *McCarthy on Trademarks & Unfair Competition* §§19:33, 19:37 (rev. 4th ed. Supp. 2017).

How to respond. File a **request form for reconsideration of this final Office action** that fully resolves all outstanding requirements and/or refusals and/or file a timely **appeal form to the Trademark Trial and Appeal Board** with the required fee(s). Alternatively, applicant may file a

request form for an extension of time to file a response for a fee.

/Lourdes Ayala/
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RESPONSE GUIDANCE

- **Missing the deadline for responding to this letter will cause the application to abandon.** A response, appeal, or extension request must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response deadline. Trademark Electronic Application System (TEAS) and Electronic System for Trademark Trials and Appeals (ESTTA) system availability could affect an applicant's ability to timely respond. For help resolving technical issues with TEAS, email TEAS@uspto.gov.

- **Responses signed by an unauthorized party** are not accepted and can **cause the application to abandon.** If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant. If applicant has an attorney, the response must be signed by the attorney.

- If needed, **find contact information for the supervisor** of the office or unit listed in the signature block.

United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on August 16, 2023 for
U.S. Trademark Application Serial No. 97352639

A USPTO examining attorney has reviewed your trademark application and issued an Office action. You must respond to this Office action to avoid your application abandoning. Follow the steps below.

(1) Read the Office action. This email is NOT the Office action.

(2) Respond to the Office action by the deadline using the Trademark Electronic Application System (TEAS) or the Electronic System for Trademark Trials and Appeals (ESTTA), as appropriate. Your response and/or appeal must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response deadline. Otherwise, your application will be abandoned. See the Office action itself regarding how to respond.

(3) Direct general questions about using USPTO electronic forms, the USPTO website, the application process, the status of your application, and whether there are outstanding deadlines to the Trademark Assistance Center (TAC).

After reading the Office action, address any question(s) regarding the specific content to the USPTO examining attorney identified in the Office action.

GENERAL GUIDANCE

- **Check the status of your application periodically** in the Trademark Status & Document Retrieval (TSDR) database to avoid missing critical deadlines.

- **Update your correspondence email address** to ensure you receive important USPTO notices about your application.

- **Beware of trademark-related scams**. Protect yourself from people and companies that may try to take financial advantage of you. Private companies may call you and pretend to be the USPTO or may send you communications that resemble official USPTO documents to trick you. We will never request your credit card number or social security number over the phone. Verify the correspondence originated from us by using your serial number in our database, TSDR, to confirm that it appears under the “Documents” tab, or contact the Trademark Assistance Center.

- **Hiring a U.S.-licensed attorney.** If you do not have an attorney and are not required to have one under the trademark rules, we encourage you to hire a U.S.-licensed attorney specializing in trademark law to help guide you through the registration process. The USPTO examining attorney is not your attorney and cannot give you legal advice, but rather works for and represents the USPTO in trademark matters.